

CHAPTER 22
ACCESS TO HEARINGS AND COURT FILES

TABLE OF CONTENTS

Access to Hearings	22-3
22.01 Public Access to Hearings	22-3
A. Presumption of Public Access to Hearings	22-3
B. Closure Only if Exceptional Circumstance Found	22-3
C. Closure Order Accessible to Public	22-3
D. Closure Does Not Bar Hearing	22-3
22.02 Party and Participant Attendance at Hearings.....	22-4
A. Parties and Participants Have Right to Attend Hearings.....	22-4
B. Absence Does Not Bar Hearing.....	22-4
C. Exclusion of Parties or Participants from Hearings	22-4
D. Order Accessible to Public	22-5
E. Exclusion Does Not Bar Hearing	22-5
Access to Court Records.....	22-5
22.03 Access to Records by Parties.....	22-5
22.04 Access to Records by Participants or Members of Public.....	22-5
A. Presumption of Access to Records	22-5
B. Order Accessible to Public	22-6
C. Effective Date	22-6
D. Applicability of Rules of Public Access to Records of Judicial Branch.....	22-6
E. Records Not Accessible to Public	22-7
22.05 Access to Exhibits.....	22-8
22.06 No Public Access to Electronic Court Information System	22-8
21.01 Protective Orders	22-9
A. Orders Regarding Public Access.....	22-9
B. Orders Regarding Party Access.....	22-9
C. Order Prohibiting Attorney from Sharing Records with Client	22-9

Order

Protective Order Template

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	PROCEDURE	AUTHORITY
	ACCESS TO HEARINGS	RJPP 27
22.01	<p>PUBLIC ACCESS TO HEARINGS</p> <p>A. PRESUMPTION OF PUBLIC ACCESS TO HEARINGS. Absent a finding of “exceptional circumstances,” hearings in juvenile protection matters are presumed to be accessible to the public. RJPP 27.01 supersedes Minn. Stat. § 260C.163, subd. 1(c), which provides that the court shall exclude the general public from hearings in juvenile protection matters and shall admit only those persons who have a direct interest in the case or in the work of the court.</p> <p>B. CLOSURE ONLY IF EXCEPTIONAL CIRCUMSTANCE FOUND. The court may, on its own initiative or on request of any party or counsel, order that a hearing, or portion of a hearing, be closed to the public only if the court finds that an “exceptional circumstance” exists.</p> <p><i>Comment -- “Exceptional Circumstance” Standard: The Supreme Court chose not to define “exceptional circumstances.” Currently, no case law on the issue exists. However, as a guide, an exceptional circumstance generally requires a finding of an overriding interest or substantial likelihood of harm to the child. The court may order closure if it finds that there is a substantial likelihood that an open hearing would interfere with the best interests of the child, after balancing the public’s interest in access to the courts and the right of a fair and public hearing. Any closure shall be no broader than is necessary to protect the overriding interests involved. The court shall also consider if there is any reasonable alternative to closing the hearing.</i></p> <p><i>If a motion is made to close a hearing or portion of a hearing, the motion may be heard in camera. If the court determines that there is no overriding interest or substantial likelihood of harm to the child to justify excluding the public from the hearing, the hearing shall continue in open court on the record. Upon request of a party, the in camera proceeding shall be transcribed and filed with the court administrator within a reasonable time.</i></p> <p>C. CLOSURE ORDER ACCESSIBLE TO PUBLIC. The closure of any hearing shall be noted on the record and the reasons for the closure given. Any oral order closing a hearing shall be reduced to writing. An order closing a hearing or portion of a hearing to the public shall be accessible to the public.</p> <p>D. CLOSURE DOES NOT BAR HEARING. Closure of all or part of a hearing shall not prevent the court from proceeding with the hearing or issuing a decision.</p>	<p>RJPP 27.01</p> <p>RJPP 27.01</p> <p>Best practice, not specified in Rule</p> <ul style="list-style-type: none"> • RJPP 27.01 • RJPP 10.01 (oral orders on the record must be reduced to writing) <p>RJPP 27.01</p>

	PROCEDURE	AUTHORITY
22.02	<p>PARTY AND PARTICIPANT ATTENDANCE AT HEARINGS</p> <p>A. PARTIES AND PARTICIPANTS HAVE RIGHT TO ATTEND HEARINGS. Notwithstanding the closure of a hearing to the public, any party who is entitled to summons or any participant who is entitled to notice of a hearing, or any person who is summoned or given notice, shall have the right to attend the hearing to which the summons or notice relates unless excluded.</p> <p><i>Comment: Pursuant to RJPP 21, a party has the right to be present in person at any hearing. For a child, the person with physical custody of the child should generally be responsible for ensuring the child's presence in court. When a child is in emergency protective care or protective care, the responsible social services agency is responsible for ensuring the child's presence in court. If the child is in the custody of the responsible social services agency in out-of-home placement, the agency should transport the child to the hearing. If the agency fails to make arrangements for the child to attend the hearing, the child's attorney or guardian ad litem may need to ask for a continuance and for an order requiring the child to be brought to the next hearing.</i></p> <p>B. ABSENCE DOES NOT BAR HEARING. Absence from a hearing by any party or participant shall not prevent the hearing from proceeding provided appropriate notice has been served.</p> <p>C. EXCLUSION OF PARTIES OR PARTICIPANTS FROM HEARINGS. The court may exclude from any hearing any party or participant, other than a guardian ad litem or counsel for any party or participant, only if it is in the best interests of the child to do so or the person engages in conduct that disrupts the court. The exclusion of any party or participant from a hearing shall be noted on the record and the reason for the exclusion given. The order must be reduced to writing.</p>	<ul style="list-style-type: none"> • RJPP 27.02 • Minn. Stat. § 260C.163, subd. 2 (right to participate in proceedings) • Minn. Stat. § 260C.151, subds. 1, 3, 4 (persons entitled to summons or notice of proceedings) • Minn. Stat. § 260C.163, subd. 8 (rights of parties at hearings) <ul style="list-style-type: none"> • RJPP 27.03 • Minn. Stat. § 260C.163, subd. 7 (court may wave presence of child when in child's best interests to do so) <ul style="list-style-type: none"> • Minn. Stat. 260C.163, subd. 7 (court may exclude parents) • <i>In Re the Matter of A.Y.-J.</i>, 558 N.W.2d 757 (Minn. Ct. App. 1997) (rev. denied) (due process does not compel physical attendance of parent at termination of parental rights proceedings)

	PROCEDURE	AUTHORITY
	22.02 Party and Participant Attendance at Hearings (continued) D. ORDER ACCESSIBLE TO PUBLIC. An order excluding a party or participant from a hearing shall be accessible to the public. E. EXCLUSION DOES NOT BAR HEARING. The exclusion of any party or participant shall not prevent the court from proceeding with the hearing or issuing a decision.	<ul style="list-style-type: none"> • RJPP 27.03 • RJPP 10.01 (oral orders on the record must be reduced to writing) RJPP 27.04
	ACCESS TO COURT RECORDS	
22.03	ACCESS TO RECORDS BY PARTIES All juvenile protection case records relating to juvenile protection matters, as those terms are defined in RJPP 2.01(k) ¹ , are presumed to be accessible to any party for inspection and copying, except for: <ol style="list-style-type: none"> 1. Audio tapes or video tapes of a child alleging or describing physical abuse, sexual abuse, or neglect of any child. 2. Portions of juvenile protection case records that identify reporters of abuse or neglect. 3. HIV test results, including any written motion and supporting data seeking HIV testing. 	RJPP 8.01 Minn. Stat. § 611A.19, subd. 2 (data regarding results of HIV test shall not be maintained in any record of the court)
22.04	ACCESS TO RECORDS BY PARTICIPANTS OR MEMBERS OF PUBLIC A. PRESUMPTION OF ACCESS TO RECORDS. Except as otherwise provided in section 22.04(F) below, all juvenile protection case records relating to juvenile protection matters, as those terms are defined in RJPP 2.01(k) ² , are presumed to	RJPP 8.01

¹ "Juvenile protection matter" means any of the following types of matters:

- (a) child in need of protection or services matters (defined in section 3.10), including habitual truant and runaway matters;
- (b) neglected and in foster care matters (defined in section 3.37);
- (c) review of foster care matters and review of out-of-home placement matters as described in Minn. Stat. § 260C.141, subd. 2, and § 260C.212;
- (d) termination of parental rights matters as described in Minn. Stat. § 260C.301 to § 260C.328; and permanent placement matters as described in Minn. Stat. § 260C.201, subd. 11, including transfer of permanent legal and physical custody to a relative matters and long-term foster care matters. *RJPP 2.01(k)*.

² *Id.*

	PROCEDURE	AUTHORITY
	<p>22.04 Access to Records by Participants or Members of Public (continued)</p> <p>be accessible to any member of the public for inspection and copying. Records relating to adoption proceedings remain inaccessible to the public. RJPP 8.01 supercedes Minn. Stat. § 260C.171, subd. 2(a), (b), and (c), which lists records accessible to the public.</p> <p>B. ORDER ACCESSIBLE TO PUBLIC. An order prohibiting access to the court file, or any record in such file, shall be accessible to the public.</p> <p>C. EFFECTIVE DATE. The presumption of public access to records is effective as follows:</p> <ol style="list-style-type: none"> 1. Open Hearings Pilot Project Counties. All juvenile protection case records deemed to be accessible to the public pursuant to this rule and filed in any of the twelve open hearings pilot project counties on or after June 28, 1998, shall be accessible to the public for inspection and copying. All juvenile protection case records deemed to be accessible to the public pursuant to this rule and filed in any of the twelve open hearings pilot project counties before June 28, 1998, shall not be accessible to the public for inspection and copying. 2. Non-Open Hearings Pilot Project Counties. All juvenile protection case records deemed to be accessible to the public pursuant to this rule and filed in any non-open hearings pilot project county on or after July 1, 2002, shall be accessible to the public for inspection and copying. All juvenile protection case records deemed to be accessible to the public pursuant to this rule and filed in any non-open hearings pilot project county before July 1, 2002, shall not be accessible to the public for inspection and copying. <p><i>Comment: Twelve counties participated in the open hearings pilot project from June 28, 1998, through June 30, 2002: Chisago, Clay, Goodhue, Hennepin, Houston, LeSueur; Marshall, Pennington, Red Lake, Stevens, St. Louis—Virginia; Watonwan.</i></p> <p>D. APPLICABILITY OF RULES OF PUBLIC ACCESS TO RECORDS OF THE JUDICIAL BRANCH. Except where inconsistent with this rule, the Rules of Public Access to Records of the Judicial Branch promulgated by the Minnesota Supreme Court shall apply to juvenile protection case records relating to juvenile protection matters. Subdivisions 1(a) and 1(c) of Rule 4 of</p>	<p></p> <p>RJPP 8.01</p> <p>RJPP 8.01</p> <p>RJPP 8.02, subd. 1</p> <p>RJPP 8.02, subd. 2</p> <p>RJPP 8.03</p>

	PROCEDURE	AUTHORITY
	<p>22.04 Access to Records by Participants or Members of Public (continued)</p> <p>the Rules of Public Access to Records of the Judicial Branch, which prohibit public access to domestic abuse restraining orders and judicial work products and drafts, are not inconsistent with this rule.</p> <p>E. RECORDS NOT ACCESSIBLE TO THE PUBLIC. The following records in the court file are not accessible to the public:</p> <ol style="list-style-type: none"> 1. Transcripts, stenographic notes, and recordings of testimony of anyone taken during portions of proceedings that are closed by the presiding judge. 2. Audiotapes or videotapes of a child alleging or describing physical abuse, sexual abuse, or neglect of any child. 3. Victims' statements. 4. Portions of juvenile protection case records that identify reporters of abuse or neglect. 5. HIV test results, including any written motion and supporting data seeking HIV. 6. Medical records, chemical dependency evaluations and records, psychological evaluations and records, and psychiatric evaluations and records. 7. Sexual offender treatment program reports. 8. Portions of photographs that identify a child. 9. Applications for ex parte emergency protective custody orders, and any resulting orders, until the hearing where all parties have an opportunity to be heard on the custody issue, provided that, if the order is requested in a Child in Need of Protection or Services (CHIPS) petition, only that portion of the petition that requests the order shall be deemed to be the application for purposes of this provision. 10. Records or portions of records that specifically identify a minor victim of an alleged or adjudicated sexual assault. 11. Notice of pending court proceedings provided to an Indian tribe by the responsible social services agency pursuant to the Indian Child Welfare Act (ICWA), 25 U.S.C. § 1912. 12. Records or portions of records that the court in exceptional circumstances has deemed to be inaccessible to the public. 13. Records or portions of records that identify the name, address, home, or location of any shelter care or foster care facility in which a child is placed pursuant to an 	<p>RJPP 8.04</p> <p>Minn. Stat. § 611A.19, subd. 2 (data regarding results of HIV test shall not be maintained in any record of the court)</p>

	PROCEDURE	AUTHORITY
	<p>22.04 Access to Records by Participants or Members of Public (continued)</p> <p>emergency protective care placement, foster care placement, pre-adoptive placement, adoptive placement, or any other type of court ordered placement.</p> <p><i>Comment: While medical records, psychological evaluations, treatment reports, and similar records are inaccessible to the public, verbatim quotations or summaries of information from such records included in social worker and guardian ad litem reports <u>are</u> accessible to the public and do not need to be redacted.</i></p>	RJPP 8.04, Committee Comment
22.05	<p>ACCESS TO EXHIBITS</p> <p>Case records received into evidence as exhibits shall be accessible to the public unless subject to a protective order issued pursuant to RJPP 8.07.</p> <p><i>Comment: An exhibit that has been offered, but not expressly admitted into evidence by the court, does not become accessible to the public under RJPP 8.05. Exhibits admitted during a trial or hearing are distinguished from reports or records attached as exhibits to a petition or a report of a social worker or guardian ad litem. Merely attaching a document as an "exhibit" to social worker or GAL report or another filed document does not render such "exhibit" to be accessible to the public under RJPP 8.05.</i></p>	<ul style="list-style-type: none"> • RJPP 8.05 • RJPP 8.07 (authorizes protective orders)
22.06	<p>NO PUBLIC ACCESS TO ELECTRONIC COURT INFORMATION SYSTEM</p> <p>Except where authorized by the district court or court rule, there shall be no direct public access to juvenile protection case records maintained in electronic format in court information systems such as TCIS or MNCIS terminals that are accessible to the public.</p> <p><i>Comment: So as to preclude widespread distribution of case records and information about children into larger, private databases that could be used to discriminate against children for insurance, employment, and other purposes, RJPP 8.06 intentionally limits access to records, documents, or information stored by courts in electronic formats such as TCIS or MNCIS. This concern about inappropriate use of juvenile protection file data also led the Court to decide that case titles in the petition and other documents are to include only the name of the parent or legal custodian, and exclude the name or initial of the child(ren) (see RJPP 8.08). RJPP 8.06 allows the courts to prepare calendars</i></p>	<p>RJPP 8.06</p> <p>RJPP 8.06, Committee Comment</p>

	PROCEDURE	AUTHORITY
	<p>22.06 No Public Access to Electronic Court Information System (continued)</p> <p><i>that identify cases by the appropriate caption. To the extent that court information systems can provide appropriate "electronic formats for public access" (such as a TCIS or MNCI S terminal available for public use in a courthouse), RJPP 8.06 allows the district court to make those accessible to the public.</i></p>	
22.07	<p>PROTECTIVE ORDERS</p> <p>A. ORDERS REGARDING PUBLIC ACCESS. The court may sua sponte, or upon motion and hearing, issue an order prohibiting public access to juvenile protection case records that are otherwise accessible to the public only if the court finds that an exceptional circumstance exists. The protective order shall state the reason for issuance of the order. If the court issues a protective order on its own motion and without a hearing, the court shall schedule a hearing on the order as soon as possible at the request of any person. A protective order is accessible to the public.</p> <p>B. ORDERS REGARDING PARTY ACCESS. The court may sua sponte, or upon motion and hearing, issue a protective order prohibiting a party's access to juvenile protection case records that are otherwise accessible to the party. The protective order shall state the reason for issuance of the order. If the court issues a protective order on its own motion and without a hearing the court shall schedule a hearing on the order as soon as possible at the request of any person. A protective order is accessible to the public.</p> <p><i>Comment: If a motion for a protective order is filed, the motion may be heard in camera. If the court determines that there is no overriding interest or substantial likelihood of harm to the child to justify the protective order, the record shall remain accessible. Upon request of a party, the in camera proceeding shall be transcribed and filed with the court administrator within a reasonable time.</i></p> <p>C. ORDER PROHIBITING ATTORNEY FROM SHARING RECORDS WITH CLIENT. The court may issue a protective order to prohibit an attorney from sharing a specific record or portion of a record with a client other than a guardian ad litem.</p>	<p>RJPP 8.07, subd. 1</p> <p>RJPP 8.07, subd. 2</p> <p>Best practice, not in court rule</p> <p>Minn. Stat. § 260C.171, subd. 3</p>

State of Minnesota

DISTRICT COURT

County

Judicial District: _____

Court File Number: _____

Case Type: Juvenile

In the Matter of the Welfare of the Child(ren) of:

Protective Order

☐ Parent ☐ Legal Custodian

☐ Parent ☐ Legal Custodian

On _____, a motion was filed by _____
requesting the following with respect to access to hearings and/or records (*check all that apply*):

Hearings:

- ☐ All hearings in this juvenile protection matter be closed to the public.
☐ The hearing to be held _____ be closed to the public.
☐ Any portion of a hearing where the child is to testify be closed to the public.
☐ Other (*specify*) _____

Records

- ☐ All records in this juvenile protection matter be inaccessible to the public.
☐ The following records be inaccessible to the public: _____

BASED UPON THE EVIDENCE PRESENTED, THE CONTENT OF THE FILE, AND ALL OF THE PROCEEDINGS, THE COURT MAKES THE FOLLOWING FINDINGS:

☐ **1. Hearings**

- a. ☐ An exceptional circumstance does not exist to justify closure of any hearing to the public.
b. ☐ The following exceptional circumstance exists to justify closure of all hearings in this matter to the public _____

c. ☐ The following exceptional circumstance exists to justify closure of the following hearing, or portion of a hearing, in this matter to the public: _____

☐ **2. Records**

- a. ☐ An exceptional circumstance does not exist to justify making the court file inaccessible to the public.
- b. ☐ The following exceptional circumstance exists to justify making the entire court file inaccessible to the public _____

- c. ☐ The following exceptional circumstance exists to justify making the following record(s) inaccessible to the public _____

BASED UPON THE FORGOING FINDINGS OF FACT, THE COURT MAKES THE FOLLOWING ORDER:

Hearings:

- ☐ The motion is denied – no hearings shall be closed to the public.
- ☐ The motion is granted – all hearings in this juvenile protection matter shall be closed to the public.
- ☐ The motion is granted – the hearing to be held on _____ shall be closed to the public.
- ☐ The motion is granted – any portion of a hearing where the child is to testify shall be closed to the public.
- ☐ Other (*specify*) _____

Records

- ☐ The motion is denied – all records in the court file shall remain accessible the public, except as provided by court rule or statute.
- ☐ The motion is granted – all records in the juvenile protection matter court file shall be inaccessible to the public.
- ☐ The motion is granted – the following records shall be inaccessible to the public: _____

Dated: _____

By the Court:

Judge of District Court